Supreme Court, U.S.
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No. 99-1044

In The

Supreme Court of the United States

JAMES J. CERVANTES,

Petitioner,

v.

LARRY JONES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION TO CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May a police officer, who has fabricated evidence about a confession, secure immunity from an action under 42 U.S.C. §1983 by testifying about his deceit before a grand jury?

BRIEF IN OPPOSITION TO CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

ARGUMENT

A police officer who fabricates evidence of a false confession should be responsible "for the natural consequences of his actions." *Monroe v. Pape*, 365 U.S. 167, 187 (1961); *Malley v. Briggs*, 475 U.S. 335, 345 (1986).

The Eleventh Circuit has fashioned a rule that damages for the fabrication of evidence end when the wrongdoer testifies before a grand jury. *Jones v. Cannon*, 174 F.3d 1271, 1287 (11th Cir. 1999). This rule, which is in accord with dicta in *Kulwicki v. Dawson*, 969 F.2d 1454, 1467 n.16 (3d Cir. 1992), is at odds with this Court's holding in *Franks v. Delaware*, 438 U.S. 154 (1978), that the Fourth Amendment would be "reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile." *Id.* at 168.

The Seventh Circuit in this case rejected respondent's request that it follow the Eleventh Circuit. Instead, the court of appeals allied itself with the Courts of Appeals for the Second, Sixth, Ninth, and Tenth Circuits that have applied the "complaining witness" rationale to impose liability on police officers who fabricate evidence and then testify about their deceit.[1] (Pet.App. 6-7.)

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[1] *White v. Frank*, 855 F.2d 959, 958-59 (2d Cir. 1988); *Ireland v. Tunis*, 113 F.3d 1435, 1447 (6th Cir. 1997); *Harris v. Roderick*, 126 F.3d 1189, 1198-99 (7th Cir. 1997); *Anthony v. Baker*, 955 F.2d 395, 1401 (10th Cir. 1992).

CONCLUSION

Respondent has accurately identified a conflict among the circuits which, like the conflict set out in the petition for writ of certiorari, should be resolved by this Court.

January, 2000

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